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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 28, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 06OD-128

OAHU

Approval in Principle of Land Exchange between the State of Hawaii, on behalf of the Department of Education, and Castle Residuary LLC to Acquire Privately-Owned Land at Kalaheo Hillside, Kailua, Oahu, Tax Map Key: (1) 4-4-011:portion of 003, as an addition to Kalaheo High School, in Exchange for State-Owned Land at Castle Junction, Oahu, further described as road remnants abutting Tax Map Key: (1) 4-5-035:003 and 005.

APPLICANT AGENCY:

Department of Transportation ("DOT") on behalf of Department of Education ("DOE") for Kalaheo High School.

PRIVATE LANDOWNER:

Castle Residuary LLC (hereinafter referred to as "Kaneohe Ranch"), a Hawaii Limited Liability Company and 100% subsidiary of Kaneohe Ranch Company, LLC, whose business and mailing address is Castle Junction, 1199 Auloa Road, Kailua, Hawaii 96734.

LEGAL REFERENCE:

Sections 171-50 and 171-11, Hawaii Revised Statutes, as amended.

SYNOPSIS

DOE wishes to extend sub-standard KHS athletic field to league-standard dimensions so seeks acquisition of privately owned hillside property ("subject property") abutting the field. Hillside landowner wishes to acquire two DOT-controlled, State-owned road remnants next to its headquarters to add more parking. Applicants and the private landowner propose a land exchange pursuant to §171-50, HRS, in support of these objectives. DOT has no use for the remnants and supports the proposed exchange.

Since DOE has no statutory authority to own land, DLNR as title holder for the State must acquire the subject property and then,

to transfer control and management of the property to DOE, process a set aside by Governor's executive order.

Since KHS/DOE will conduct its own due diligence and will be the sole State beneficiary should the land exchange and subsequent set aside be executed, this approval in principle is specifically conditioned on the requirement that the DOE (and not the DLNR, BLNR nor the State) be held responsible and liable for any problems that arise from the encumbrances or environmental or hazardous conditions at the property to be acquired.

Approval in principle of the land exchange is sought by the applicants in order to allow the parties to commence due diligence.

PROPERTIES TO BE EXCHANGED:

**State-Owned Property:**

Location: Government lands of Kailua situated at Kailua, Oahu, identified as road remnants abutting TMK (1) 4-5-035:003 and TMK (1) 4-5-035:005, as shown on the attached map labeled Exhibit A-1, plot plan labeled Exhibit A-2, and photographs labeled Exhibit A-3.

Area: 1-2 acres, more or less (final area dependent upon valuation)

Zoning: State Land Use District: Conservation  
City and County of Honolulu CZO: P-1  
(Preservation)

Trust Status: Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_ NO X

Current Use: The road remnants are currently under control of the Department of Transportation and consist of 1) a road remnant which abuts the Kaneohe Ranch Headquarters and 2) an abandoned road remnant and landscaped area (including a War Memorial and flag pole).

State-owned lands to be conveyed shall be subject to all exceptions, exclusions, reservations and easements of record.

"The public land exchange shall be of substantially equal value to that of the private land. In any exchange, the fair market value of the private land and the public land shall be separately determined by a disinterested qualified appraiser or appraisers and the cost shall be borne equally between the owner and the board. No payment by the State shall be required should the private land exceed the value of the public land, but any difference in value of the public land over the private land

shall be paid to the State at the time of the exchange; provided no exchange shall be made should public land exceed 120 per cent of the value of the private land."

APPLICANT REQUIREMENTS:

Prior to final approval of any land disposition contemplated hereunder, thorough due diligence shall be carried out by the Applicant, the DOE, and/or the landowner, and requirements including but not limited to the following shall be completed. The DOE and/or Kaneohe Ranch will be responsible for these and any other requirements and their associated costs.

- 1) Appraisal to determine the value of the properties to be exchanged;
- 2) Posting of public notice pursuant to section 171-16, HRS;
- 3) Preparation of survey maps and descriptions for the privately-owned property according to State DAGS standards;
- 4) Completion of a title report for the privately-owned property which shall be subject to review and approval by the Department;
- 5) Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, a Phase II environmental sampling and analysis plan and any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department of Land and Natural Resources ("Department" or "DLNR").
- 6) Preparation and submission for introduction to the legislature, with a copy to be provided to the Office of Hawaiian Affairs, of a resolution for review of action on the exchange to be consummated by the Board, pursuant to Section 171-50, HRS.
- 7) Any other appropriate due diligence matters as may be required, as determined by the Chairperson or the Department.

REMARKS:

Background on the Exchange: The Department of Transportation ("DOT"), on behalf of the Department of Education ("DOE"), and Castle Residuary LLC ("Kaneohe Ranch") are seeking this land exchange in order to allow for expansion of the athletic field of

the DOE's Kalaheo High School. The limited size of this athletic field stems from the school's history. Originally created as Kalaheo Hillside Intermediate School in 1966, it was converted to the present day Kalaheo High School in 1973 to relieve overcrowding at the existing area high school (Kailua High and Intermediate School).

While the DOE had planned to build a new athletic field for Kalaheo High School on Iliaina Street next to the residential neighborhood, due to strong opposition from the local community, they instead built it on the former intermediate school's play field abutting the hillside on Mokapu Boulevard. As a result, Kalaheo High School's athletic field was not built to league standards. This has in turn limited the development of the school's physical education program, requiring some of its athletic teams to practice and play home games off-campus.

Over the years, at the school's and community's urging, efforts have been made to seek expansion of the athletic field, and the Legislature appropriated money towards this end, however, the expansion of the field to league standards has not yet been realized. Discussions over the last several years have focused on a land exchange with Kaneohe Ranch which would allow for expansion into the hillside area southwest of the present field. Kaneohe Ranch supports this proposed land exchange and has identified certain State-owned road remnants adjacent to their headquarters site at Castle Junction which they are interested in acquiring. The Department of Transportation controls those remnants and is agreeable to this land exchange since they no longer need the remnants for highway improvements in this area.

DLNR itself has no interest in the proposed exchange other than as the State of Hawaii's land records processor and title holder. As such, associated concerns including but not limited to the following should be addressed by DOE in its due diligence for this exchange, and DOE and/or the private landowner shall be responsible for all costs associated with such due diligence:

- 1) Rockfall hazards and other risks associated with the hillside property to be acquired in the proposed land exchange or that may be created or exacerbated by earthwork to level the hillside for the proposed field expansion must be evaluated, and responsibility therefor and any liabilities associated therewith must be accepted by DOE.

- 2) Processing of documentation for land exchange, acquisition, and set aside is normally sequential and involves a certain amount of lag time between steps. To prevent DLNR from being left with sole responsibility of holding the lands at any time

throughout this process, a management and construction right of entry and/or other means to allow DOE to immediately assume all liability pertaining to ownership of hillside property upon acquisition is required.

3) Expansion of the athletic field is not an urgent item for DOE as a department. This may result in a low priority rating in legislative and/or DOE budgeting for all aspects of funding for acquisition due diligence, site preparation, planning and construction. Lower priority ratings may lead to lengthy delays in completion of the planned athletic field expansion, throughout which time liability for the property and any hazards associated therewith must remain with DOE and not DLNR, BLNR nor the State.

4) DLNR has no conservation or other resource interest in the private lands proposed for acquisition in this exchange; the exchange is being sought solely in DOE's interest. A formal evaluation of the status of any possible resource benefits of the acquisition should be completed to document its utility to the State.

5) The 206-acre parcel of private land of which the property of interest is a part must be subdivided to limit the exchange to include only the portion of the existing hillside parcel needed by the high school for the athletic field expansion.

6) A conservation district use permit must be obtained through the CDUA process administered by the Office of Conservation and Coastal Lands.

7) This Land Board approval in principle specifically limits any future agreement to the equivalent of a simultaneous exchange and set aside whereby responsibility for the lands are immediately transferred to the DOE upon acquisition and nothing is finalized until Governor signs.

The land sought by DOE in this exchange can serve no public purpose other than for expansion of the athletic field. Should DOE fail to develop the property to meet its intended objectives and/or abandon its intended use for the public purpose stated herein, Section 171-11, HRS, would require that the set aside be withdrawn and the property be returned to DLNR's inventory for other public uses, however, it is unlikely that any other agency would have an interest in its use.

Since KHS/DOE will conduct its own due diligence and will be the sole State beneficiary should the land exchange and subsequent set aside be executed, this approval in principle is specifically conditioned on the requirement that the DOE (and not the DLNR,

BLNR nor the State) be held responsible and liable for any problems that arise from the encumbrances or environmental or hazardous conditions at the property to be acquired, even if the set aside is withdrawn due to DOE's non-use of the property.

Background on the State Property: The State-owned road remnants abut two Kaneohe Ranch parcels, TMK (1) 4-5-035:003 and TMK (1) 4-5-035:005, and are located on either side of Aulua Road at Castle Junction in Kaneohe. Refer to Exhibits A and B. The road remnants which are currently under control of the Department of Transportation consist of:

1) Road remnant 1, located on the makai side of Aulua Road, abuts the Kaneohe Ranch Headquarters property, TMK (1) 4-5-035:003. The strip of land appears to have been a road reservation for road widening and slope. It is currently landscaped by Kaneohe Ranch and is not in use by DOT.

2) Road remnant 2 on the mauka side of Aulua Road abuts Kaneohe Ranch-owned TMK (1) 4-5-035:005. This property consists of an abandoned road remnant and landscaped area. The road remnant leads to a private driveway (on adjacent parcel TMK (1) 4-2-011:020) where it dead ends. The landscaped area contains a War Memorial plaque, boulder, flagpole, and paved pedestrian pathway from Aulua Road, none of which have been registered as historic sites.

DOT has no current or future planned use for these road remnants and supports their exchange for the private lands described above.

Background on the Private Property: The private property proposed for exchange is a portion of a 206-acre conservation-zoned parcel TMK: (1) 4-4-011:003 which lies adjacent to the current Kalaheo High School ("KHS") athletic field. It is vegetated by haole koa and fountain grass and has remained undeveloped due to its steep terrain. Kaneohe Ranch has no future plans to develop this property. It is estimated that only approximately 1 to 2 acres of the 206-acre parcel would be needed to support the proposed athletic field expansion. As part of its due diligence for the land exchange and set aside, the DOE will need to obtain a professional evaluation and assessment of KHS's proposed use of this property to support the expansion of the athletic field.

Trust land status. The State-owned remnant lands are 5(b) trust lands of the Hawaii Admission Act, therefore, any land acquired by the State in exchange for these lands will be assigned the same trust status so that the total inventory of 5(b) State trust

lands will not be diminished.

Public purpose of the proposed exchange. Acquisition of a 1-2 acre portion of TMK: (1) 4-4-011:003 for the purpose of supporting expansion of public athletic education program facilities would enhance public land trust assets for the support of public schools.

State-owned property encumbrances and use. The State-owned road remnants 1 and 2 are currently under control of the DOT and include landscaped areas maintained by Kaneohe Ranch. After the land exchange, Kaneohe Ranch would consolidate this area into its adjoining TMK (1) 4-5-035:005, and use portions of the road remnants to accommodate additional parking for their recently expanded headquarters. Kaneohe Ranch also is willing to grant an access easement across road remnant 2 to the neighboring private property driveway, and to reserve a right of public access, perpetual public easement or other similar reservation to the State for the War Memorial (plaque, boulder and flag pole) to ensure public access to the site. Kaneohe Ranch would continue to maintain the site. The applicants and Kaneohe Ranch also intend to address and resolve any issues of liability regarding the public's use of the War Memorial prior to returning to the Board for final action on the proposed land exchange.

Agency and community comments. This land exchange proposal was previously circulated for feedback during 2006 to the following agencies: DLNR State Historic Preservation Division, DLNR Office of Conservation and Coastal Lands, DLNR Division of Forestry and Wildlife, Department of Education, Department of Transportation, City and County of Honolulu Department of Planning and Permitting, City and County of Honolulu Department of Facility Maintenance, Department of Hawaiian Home Lands, and Office of Hawaiian Affairs.

While no agency cited any objections to the exchange, among some of the concerns expressed were the following: an archaeological inventory survey should be conducted of the private land area to be acquired in the proposed exchange; changes to traffic routing and infrastructure may be needed as a result of expansion of the athletic field; whether the proposed use of conservation district lands would be allowed cannot be determined because no evaluation pursuant to Chapter 183C, HRS, has yet been completed; there is potential for rockfall hazard risks associated with the proposed acquisition and its use to support field expansion; and the construction project to support the proposed field expansion would not fall into high priority ranking in DOE budget categories.



Other pertinent issues or concerns. Kaneohe Ranch and Kalaheo High School both understand that the exchange properties are within the State Conservation District and are therefore prepared to apply for a Conservation District Use Permit (CDUP) for use of each property as required. Other permits and assessments may also be required.

Other Remarks. Neither Applicant parties nor Kaneohe Ranch have had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.


RECOMMENDATION:

That the Board:

1. Approve in principle the above-described land exchange between the State of Hawaii, on behalf of the Department of Education, and Castle Residuary LLC, under the terms and conditions cited above which are by this reference incorporated herein, provided that appropriate due diligence shall be conducted by KHS/DOE and details of the proposed exchange shall be submitted to the Board for final approval prior to documentation.
2. Provide the approval in principle specifically subject to:
  - a. The DOE (and not the DLNR, BLNR nor the State) shall be held responsible and liable for any problems that arise from the encumbrances or environmental or hazardous conditions at the property to be acquired.
  - b. As DLNR itself has no interest in the proposed exchange other than as the State of Hawaii's land records processor and title holder, associated concerns including but not limited to the following shall be addressed by DOE in its due diligence for this exchange, and DOE and/or the private landowner shall be responsible for all costs associated therewith.
    - i. Rockfall hazards and other risks associated with the hillside property to be acquired in the proposed land exchange or that may be created or exacerbated by earthwork to level the hillside for the proposed field expansion must be evaluated and responsibility therefor and any liabilities associated therewith must be accepted by DOE.
    - ii. Processing of documentation for land exchange, acquisition, and set aside is normally sequential and involves a certain amount of lag time between steps. To prevent DLNR from being left with sole responsibility for holding the lands at any time throughout this process, a management and construction


- right of entry and/or other means to allow DOE to immediately assume all liability pertaining to ownership of the hillside property upon acquisition is required.
- iii. Should there be lengthy delays in completion of the planned athletic field expansion, liability for the property and any hazards associated therewith must remain with DOE and not DLNR, BLNR nor the State throughout that time of delay.
  - iv. A formal evaluation of the status of any possible resource benefits of the acquisition should be completed to document its utility to the State.
  - v. The 206-acre parcel of private land, of which the property of interest is a part, must be subdivided to limit the exchange to include only that portion of the existing hillside parcel needed by the high school for the athletic field expansion.
  - vi. A conservation district use permit to allow use of the hillside property for the athletic field expansion must be obtained through the CDUA process administered by the Office of Conservation and Coastal Lands.
  - vii. Since KHS/DOE will conduct its own due diligence and will be the sole State beneficiary should the land exchange and subsequent set aside be executed, this approval in principle is specifically conditioned on the requirement that the DOE (and not the DLNR, BLNR nor the State) be held responsible and liable for any problems that arise from the encumbrances or environmental or hazardous conditions at the property to be acquired, even if the set aside must be later withdrawn due to DOE's non-use of the property.
- c. The DOT or the DOE (and not DLNR) shall prepare and submit for introduction to the legislature, with a copy to be provided to the Office of Hawaiian Affairs, a resolution for review of action on the exchange to be consummated by the board, pursuant to Section 171-50, HRS.
3. Authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board and to best serve the interests of the State.

Respectfully Submitted,

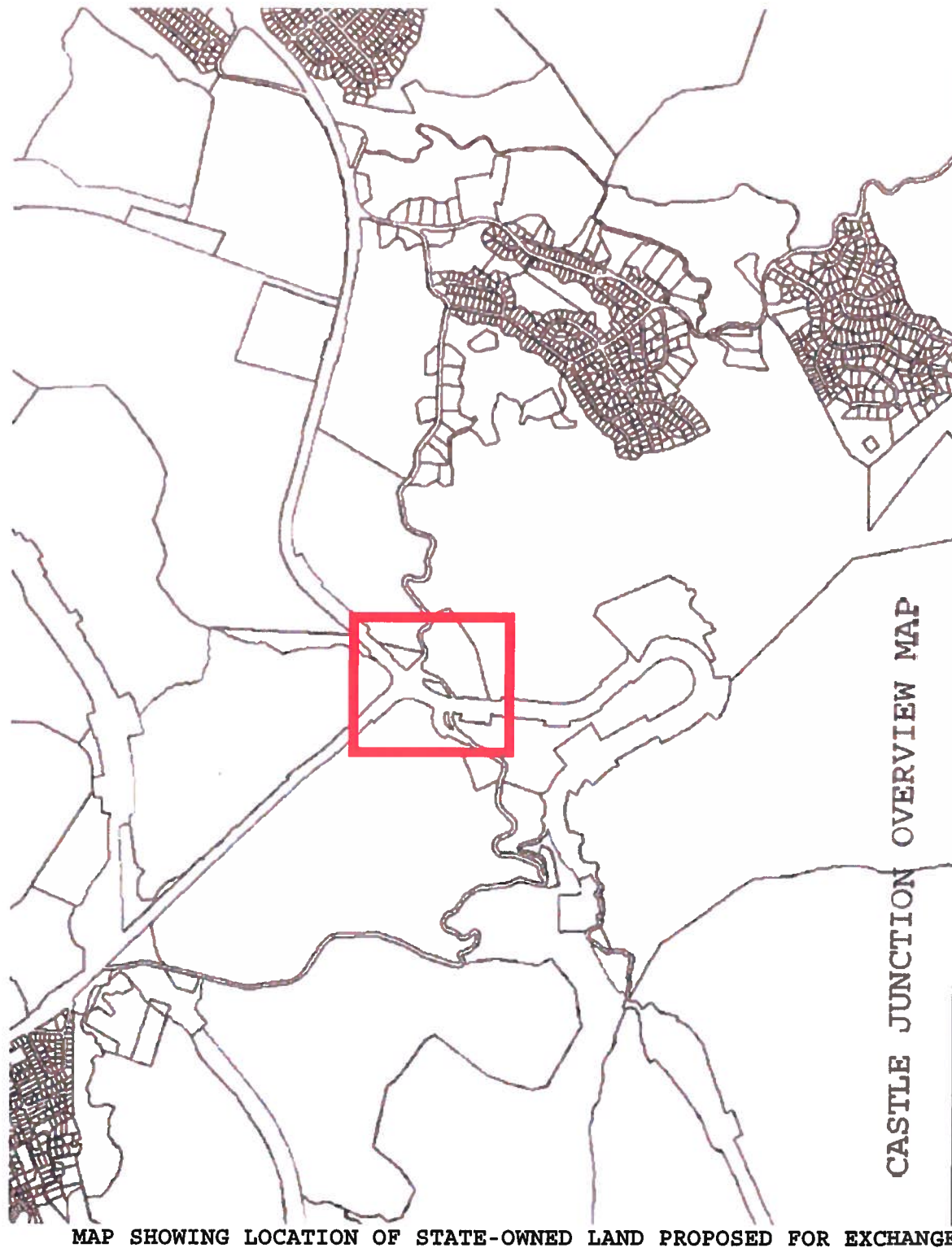
  
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Barbara J. Lee  
Project Development Specialist

October 28, 2010

APPROVED FOR SUBMITTAL:

  
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LAURA H. THIELEN  
Chairperson and Member

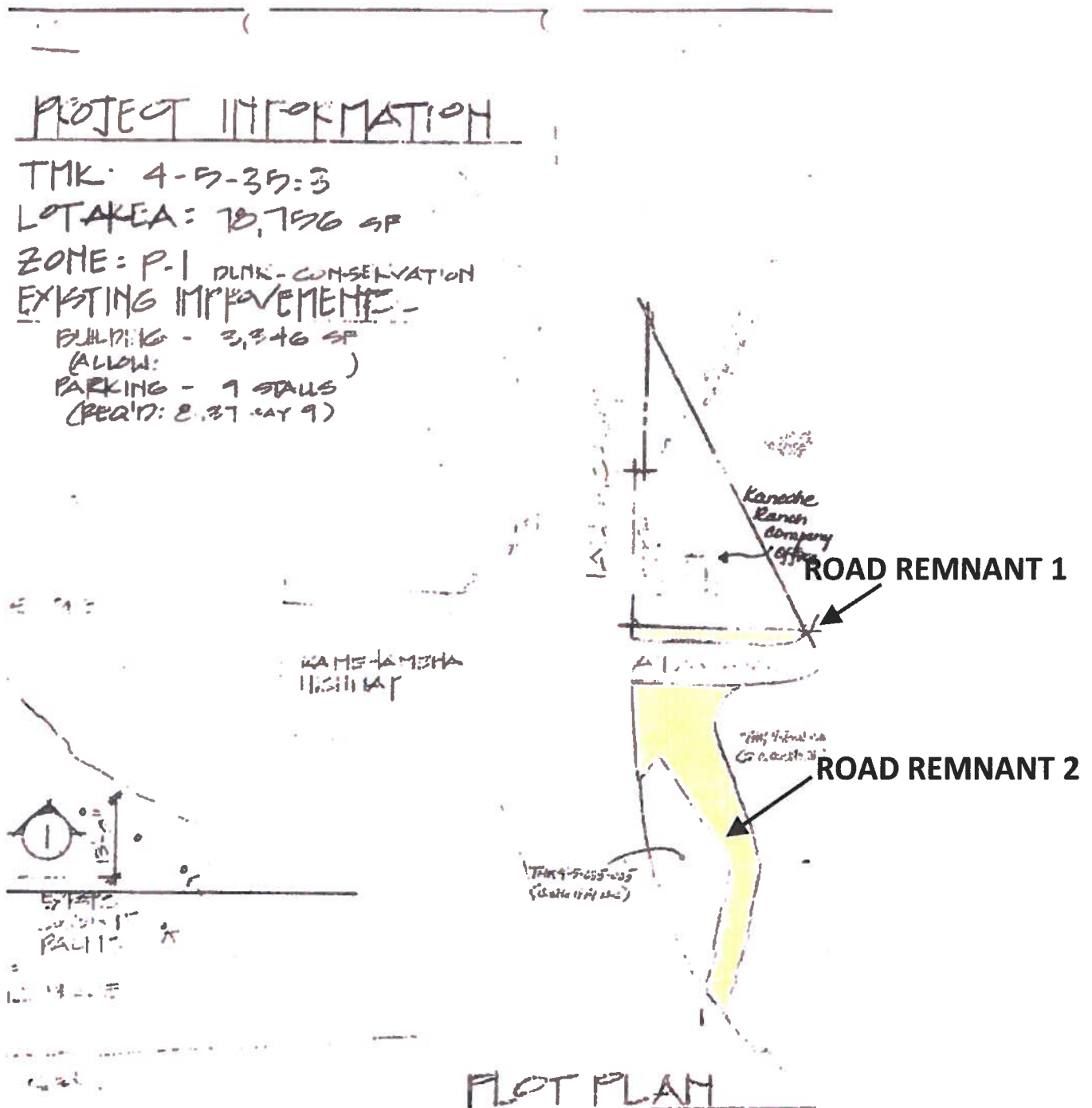
October 28, 2010



MAP SHOWING LOCATION OF STATE-OWNED LAND PROPOSED FOR EXCHANGE

**EXHIBIT A-1**

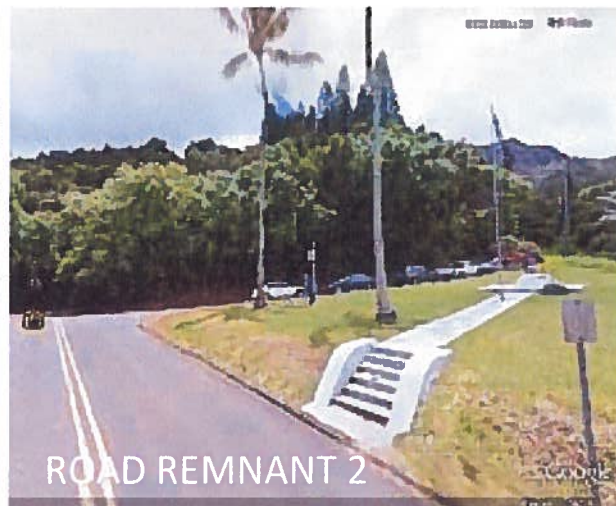
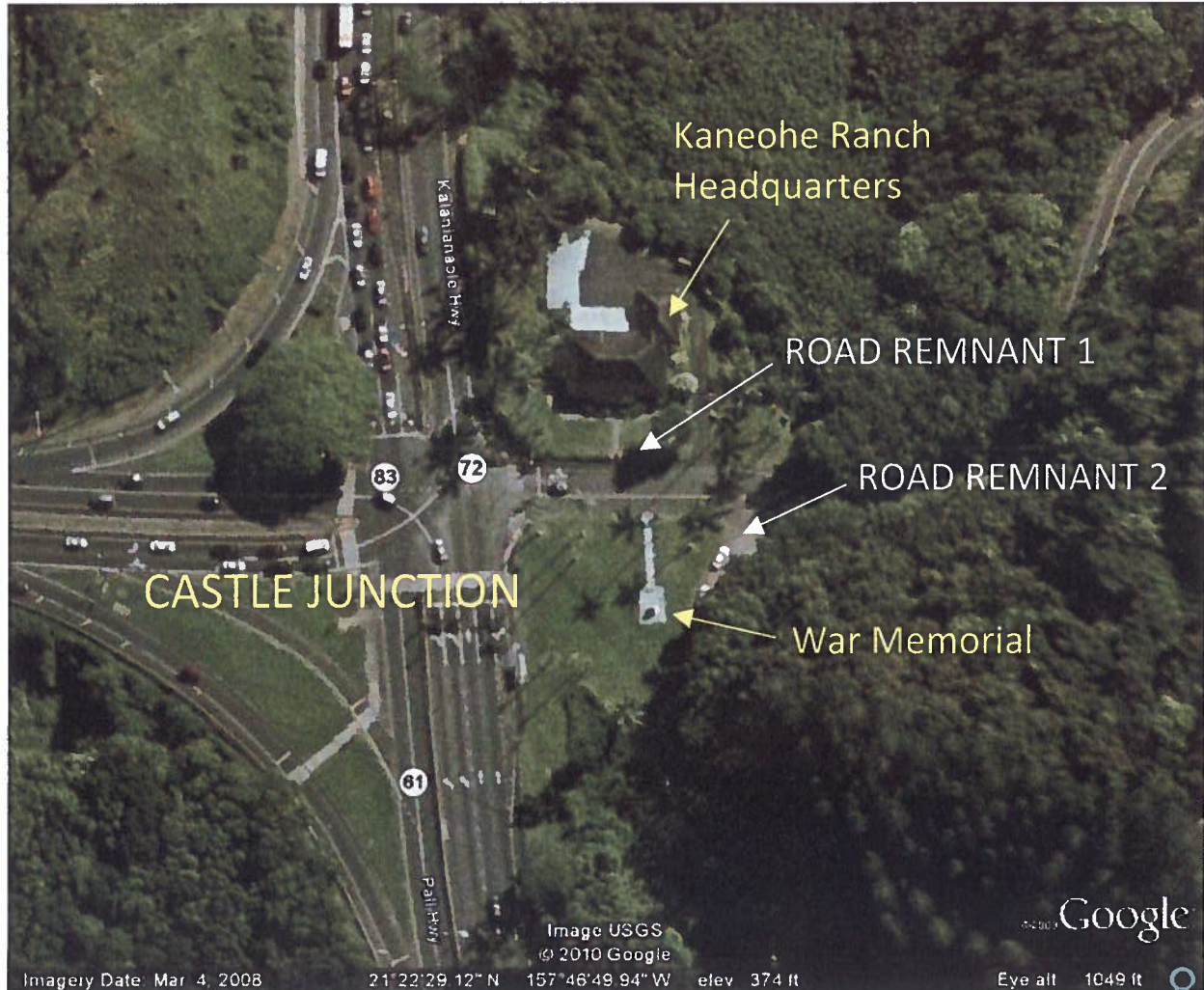
October 28, 2010



PLOT PLAN OF STATE-OWNED LAND PROPOSED FOR EXCHANGE

**EXHIBIT A-2**

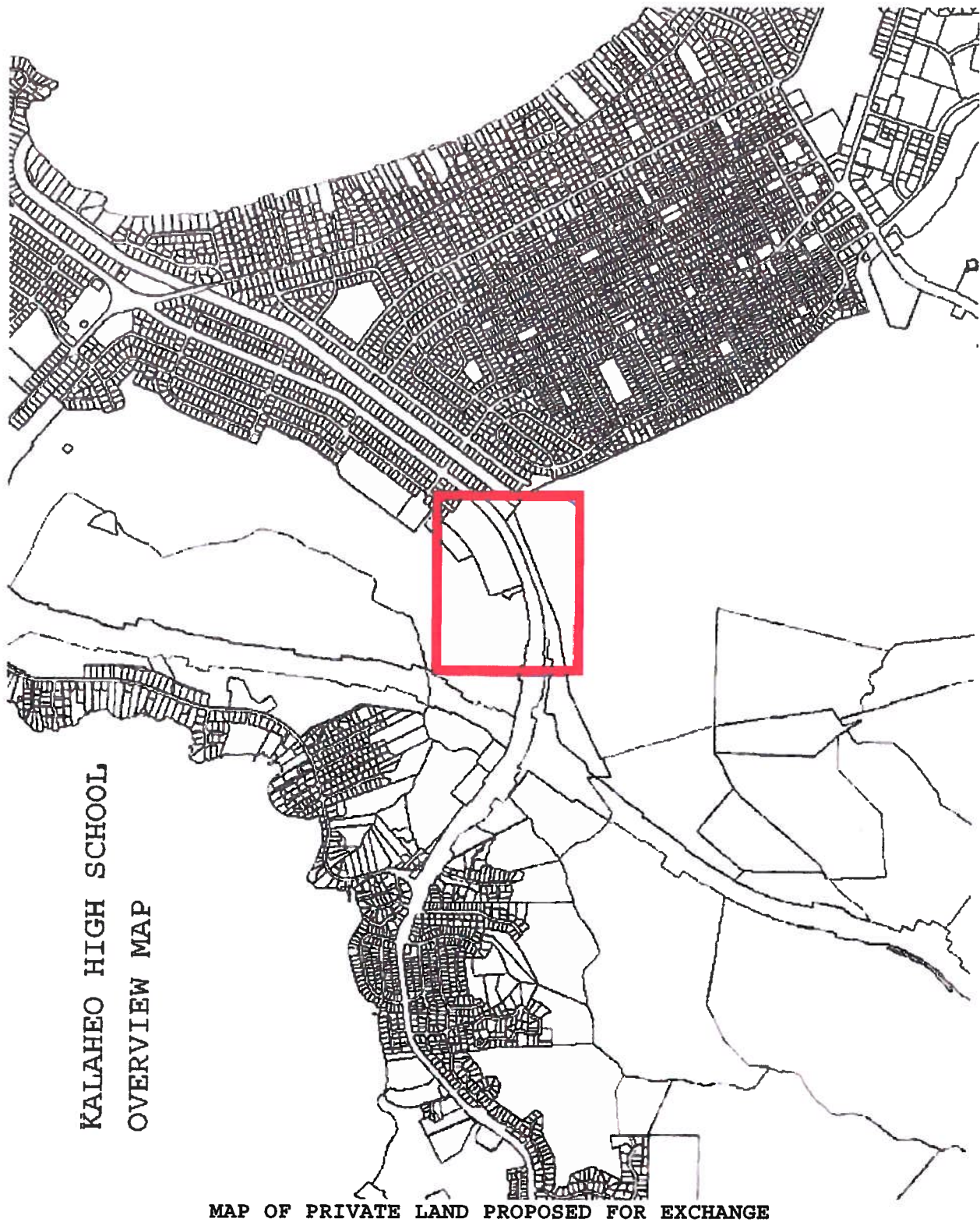




PHOTOGRAPHS OF STATE-OWNED LAND PROPOSED FOR EXCHANGE

**EXHIBIT A-3**



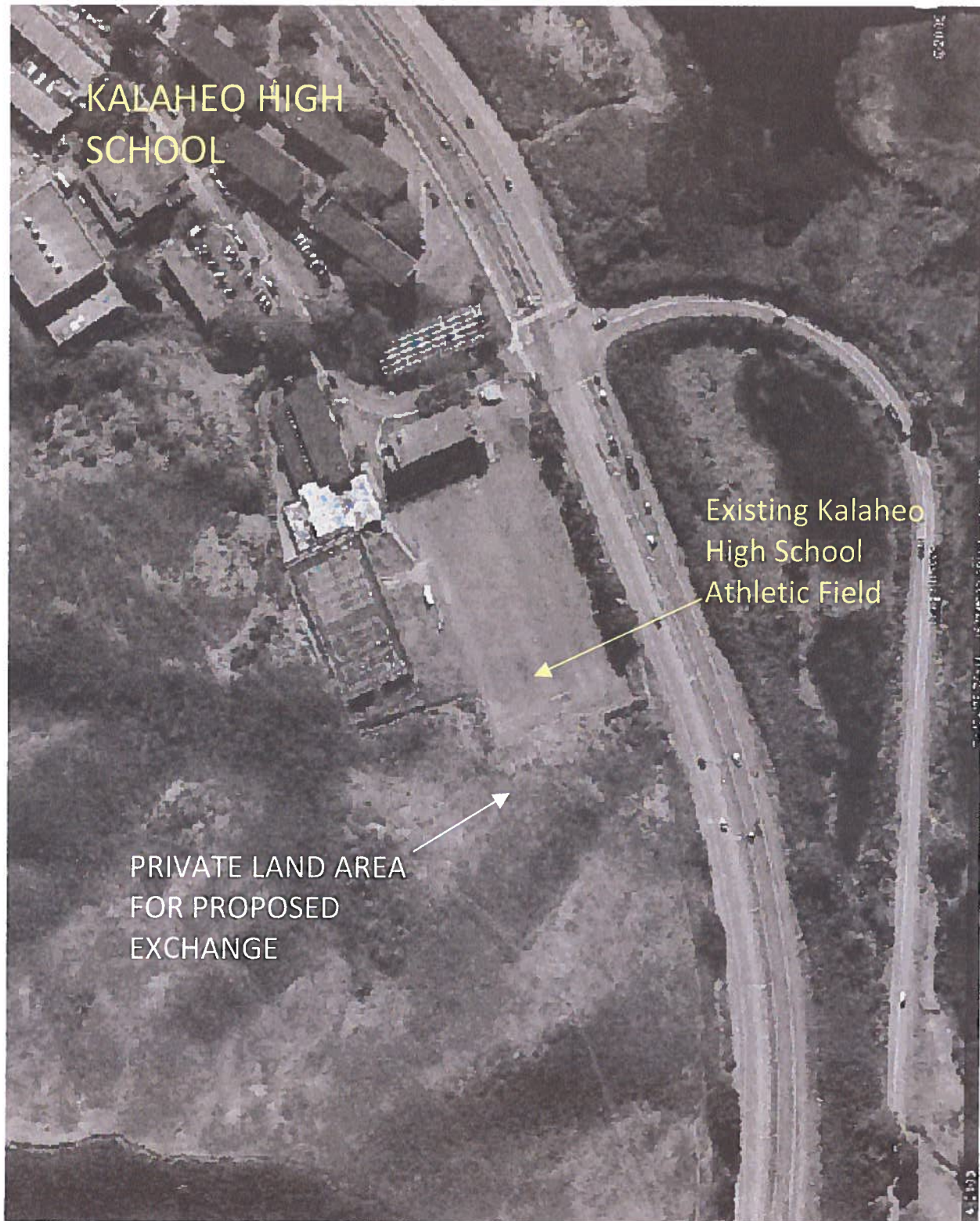


KALAHEO HIGH SCHOOL  
OVERVIEW MAP

MAP OF PRIVATE LAND PROPOSED FOR EXCHANGE

**EXHIBIT B-1**





PHOTOGRAPHS OF PRIVATE LAND PROPOSED FOR EXCHANGE

**EXHIBIT B-2**





PHOTOGRAPHS OF ATHLETIC FIELD AND HILLSIDE PROPOSED FOR EXCHANGE

**EXHIBIT B-3**